

Mr. Ford:

Thank for the information regarding proposed changes to Washington's public records act. For what it's worth, here are some of my thoughts. In cases where there are denials or refusals involving public records, the requirement of an administrative process that mandates exhaustion of administrative remedies raises a whole host of problems. First, as an attorney who has been practicing law for 25 years, I have done many administrative hearings. While there are many who may take the position that "anyone can do administrative hearings" this is absolutely untrue. It takes familiarity with the process and some degree of training and skill. Those who advocate for such a system either know, or should know, that the lay public is woefully unable to participate meaningfully in such a system.

Should such a system be instituted, there will be few (if any) attorneys who will represent clients. This is because such a process will probably not provide for attorney fees, even if the requesting party is successful.

Another problem is that if a member of the lay public represents himself or herself in such a hearing, he or she is unlikely to be able to successfully lay the groundwork for a later appeal. Fatal mistakes are almost certain to be made at this stage, thus making any later appeal to superior court impossible.

I have been involved in several public records cases, and can tell you first-hand that the number of attorneys who will take such cases is very small. In fact, in Spokane, it is probably limited to the Center for Justice. Several years ago, a group I represent, Animal Advocates of the Inland Northwest, attempted to retain an attorney in connection with a public records request of the City of Spokane. I made a lot of telephone calls in connection with the case, and only the Center for Justice was willing to accept the matter. Ultimately, the Center for Justice filed suit against the City on behalf of Animal Advocates and the case later settled for \$30,000. I feel quite certain that if administrative exhaustion had been required, there would not have been anyone or any group that would have taken the case.

An additional concern involves independent decision-makers in such cases. The constitutional requirements in *Crescent Convalescent Center v. DSHS*, 87 Wn. App. 353 (1997) might well apply. I wonder about a governmental agency's or local government's ability to provide an independent decision-maker. If, as under the APA, an administrative law judge (ALJ) is required, then a great deal of training (and perhaps many additional ALJ positions) will be necessary. This would undoubtedly increase the state budget at a time when there are cuts that must be made.

Thank you for taking time to read this message. Please feel free to contact me if I can answer any questions or provide you with additional information regarding my experiences in public records cases.